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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,459	10/12/2000	Arthur M. Tofani, Jr.	E-1902	7967

7590

11/15/2005

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EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/689,459

Applicant(s)

TOFANI, JR. ET AL.

Examiner

Jeffrey L. Gellner

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3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-25, 27-29 and 53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 213-25, 27-29, 53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC §103*

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 53 and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Wilson (US 5,641,233; 3<sup>rd</sup> document listed on page 1 of Applicant's 1449 received 6 April 2001) in view of Cameron (AU 9466054 A).

As to Claim 53, Wilson discloses an applicator (Figs. 1-5) comprising a compound in a reservoir (14 of Figs. 1 and 2) and a regulatable valve (generally 259 of Figs. 1 and 2) on the reservoir; the regulatable valve having a first valve element (18 and 11 of Figs. 1 and 2) and a second valve element (28 and 16 of Figs. 1 and 2) relative to the first valve element, the second valve element having a brush (12 of Figs. 1 and 2); the herbicide is delivered from the reservoir to the brush (Figs. 1 and 2); the flow is regulated by the position of the regulatable valve (from col. 2 lines 42-64) by applying force which moves the valve element from a first to second position, the position having a plurality range of positions (col. 2 lines 62-64), releasing the force being applied allows the valve element to maintain its position (from col. 2 lines 62-64), wherein the movement of the second valve element relative to the first valve element includes movement of a sealing member therealong with which maintains engagement with the first valve element during movement ("thread" of Figs. 1, 2, and col. 2 lines 42-64 are sealing members that maintain engagement with portions of element 18). Not disclosed is the applicator used for

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applying herbicide to a plant. Cameron, however, discloses the use of brush application for application of herbicide to a plant. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify application of Wilson by using to apply herbicide as disclosed by Cameron so as to increase the usefulness of the applicator so as to increase sales. The application of Wilson as modified by Cameron inherently performs the method steps recited in claim 53.

As to Claim 23, the limitations of Claim 53 are disclosed as described above. Not disclosed is the use of oil-based herbicides. Examiner takes official notice that it is old and notoriously well known in the pesticides art to use oil base herbicides in herbicide applicators are use. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the applicator of Wilson as modified by Cameron by using the apparatus with oil-based herbicides so as to apply the desired and most effective herbicide.

Claims 24, 25, 27, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 5,641,233; 3<sup>rd</sup> document listed on page 1 of Applicant's 1449 received 6 April 2001) in view of Cameron (AU 9466054 A) in further view of Ostrowsky (US 3,993,208).

As to Claim 24, the limitations of Claim 53 are disclosed as described above. Not disclosed is a safety cover means with securing means of rotating the cover means past a predetermined stop to block reverse rotation. Ostrowsky, however, discloses the use of a cover means (36 of Fig. 1) with a securing means (20 and 51 of Fig. 1) of rotating the cover means past a predetermined stop to block reverse rotation. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the application of Wilson as

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modified by Cameron by including a cover means with securing means that blocks reverse rotation as disclosed by Ostrowsky so as to deny access to children (see Ostrowsky col. 1 lines 5-10).

As to Claim 25, Wilson as modified by Cameron and Ostrowsky further disclose application of a positive force to a portion of the cover means to enable forward rotation to release it from the reservoir (see Ostrowsky col. 4 lines 12-33; inherent in Fig. 1 of Ostrowsky).

As to Claim 27, Wilson as modified by Cameron and Ostrowsky further disclose a step of removing from the applicator an overcap which selectively covers the applicator (inherent in Fig. 1 of Ostrowsky).

As to Claim 28, the limitations of Claim 53 are disclosed as described above. Not disclosed are a safety cover means that fits on the reservoir and is rotatable past a predetermined stop to block reverse rotation. Ostrowsky, however, discloses the use of a cover means (36 of Fig. 1) that fits on a reservoir (10 of Fig. 1) with a securing means (20 and 51 of Fig. 1) of rotating the cover means past a predetermined stop to block reverse rotation. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the application of Wilson as modified by Cameron by including a cover means with securing means that blocks reverse rotation as disclosed by Ostrowsky so as to deny access to children (see Ostrowsky col. 1 lines 5-10).

As to Claim 29, Wilson as modified by Cameron and Ostrowsky further disclose application of a force to a portion of the cover means to enable forward rotation to release it from the reservoir (see Ostrowsky col. 4 lines 12-33; inherent in Fig. 1 of Ostrowsky).

*Response to Arguments*

Applicant's arguments filed 22 August 2005 have been fully considered but they are not persuasive. Applicants' arguments are: (1) Wilson does not disclose a method of eliminating unwanted vegetation or controlling pesticides and Wilson discloses a removable brush that would not be desirable to use with herbicides or pesticides and so one of ordinary skill would not have looked to Wilson for a teaching (Remarks page 4, bottom half of page); (2) Wilson does not teach the steps of regulating the flow of said herbicide or pesticide delivered by said brush to the surface . . . applying a force to move a second valve element from a first position to a second position, the second position being a plurality of a range of positions which permits flow communication from said reservoir to said brush (Remarks page 5, top half of page); and, (3) Wilson does not disclose the limitation of the added language to claim 53 at the end of the claim (Remarks page 5, bottom half of page).

As to argument (1), although Wilson does not disclose the use of his brush apparatus he does disclose that the "invention relates to a brush applicator for use with a container for a fluid product" at col. 1 lines 29-31. Herbicides and insecticides are known to be in liquid form. Combined with Cameron, one of ordinary skill would look to Wilson to use his apparatus with herbicides and pesticides. A removable brush may be advantageous to use with herbicides and pesticides so as to facilitate cleaning the brush, for example.

As to argument (2), Examiner considers the Wilson to disclose the step of - regulating the flow of said herbicide or pesticide delivered by said brush to the surface . . . applying a force to move a second valve element from a first position to a second position, the second position being

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a plurality of a range of positions which permits flow communication from said reservoir to said brush - where elements 16 and 28 change position with respect to elements 18 and 11.

As to argument (3), Examiner considers this language to be disclosed by the movement of "thread" of Figs. 1, 2, and col. 2 lines 42-64, which are the sealing members, relative to elements 18 and 11.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

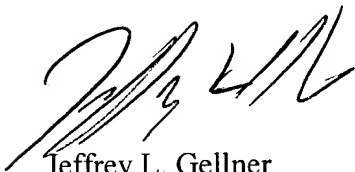
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off, if attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter

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Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. Gellner', is positioned above the printed name.

Jeffrey L. Gellner  
Primary Examiner  
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